where he can raise issues of federalism or that will affect local and state government interests. And his federalism practice boomed as he actively pursued cases attractive to his ideology and through his contacts among the members of the Federalist Society. In answer to my follow-up questions, Mr. Sutton admitted that he had taken no case in which he argued against a state claiming immunity from suit under the Eleventh Amendment. Despite his protestation that he might argue either side of any case, it must certainly be more than a coincidence that every time he has argued before the Supreme Court he has always been on the same side of this issue. Despite numerous questions, Mr. Sutton did not adequately address these concerns at his hearing nor show that he has the ability to put aside his years of passionate advocacy and treat all parties fairly. On the contrary, when you talk to Mr. Sutton and you look at his testimony, he demonstrates he has not considered the impact that his arguments have on the lives of millions of women, seniors, the disabled, low-income children, and state employees, and that he favors ideas over people, states' rights over civil rights, and a patchwork of local rules over national standards.

He has every right to these views, but when it becomes clear that those are the views that would be expressed by an extremist, then we have to ask ourselves: Are we rubberstamping or are we advising and consenting? Frankly, I believe in this case we would be rubberstamping, not advising and consenting.

Mr. Sutton has stated in several articles that states should be the principal bulwark in protecting civil liberties, a claim that has serious implications given a history of state discrimination against individuals. In numerous papers for the Federalist Society, he has repeatedly stated his belief that federalism is a ''zero-sum situation, in which either a State or a federal lawmaking prerogative must fall.'' In his articles, he has stated that the federalism cases are a battle between the states and the federal government, and ''the national government's gain in these types of cases invariably becomes the State's loss, and vice versa.''

He also states that federalism is ''a neutral principle'' that merely determines the allocation of power. This view of federalism is not only inaccurate but troubling. First, these cases are not battles in which one law-making power must fall, but in which both the state and the federal government—and the American people—may all win. Civil rights laws set federal floors or minimum standards but states remain free to enact their own more protective laws. Moreover, federalism is not a neutral principle as Mr. Sutton suggests, but has been used by those critical of the civil rights progress of the last several decades to limit the reach of federal laws.

Mr. Sutton tried to disassociate himself from these views, by saying that he does not specifically recall these remarks and that, in the ones he recalls, he was constrained to argue the positions that he argued on behalf of his clients. As far as I know, no one forced Mr. Sutton to write any article, and most lawyers are certainly more careful than to attribute their name to any paper that professes a view with which they strongly disagree. In my view, Mr. Sutton's suggestions that he does not personally believe what he has written are intellectually dishonest, insincere and misleading.

In sum, Mr. Sutton's extreme theories would restrict Congress' power to pass civil rights laws and close access to the federal courts for people challenging illegal acts by their state governments (limiting individuals' ability to seek redress for violations of civil rights). If a State government does something wrong, we ought to be able to sue the State government.

I remember shortly after the Soviet Union broke up, when a group of parliamentarians and lawyers came here to visit with a number of Senators about how they would set up a judicial system in the former Soviet Union.

One asked the question: We have heard that there are cases where somebody may sue the Government, and the Government loses. How could that possibly happen?

So we explained the independence of our courts, and we look for justice in the law and so on.

He said: You mean you didn't fire the judge if he allowed the Government to lose?

I said: Quite the opposite. In fact, the Government often loses.

Listening to Mr. Sutton, there are a lot of areas where the Federal courts would be closed to people who challenge illegal acts by their State government.

In the name of the concept of sovereign immunity, Mr. Sutton threatens to undermine uniform national laws protecting individuals' rights to welfare, housing, clean air, equality, and a harassment-free environment, and to undermine the core protections and services afforded by Congress to workers, the disabled, the aged, women, and members of religious minorities.

This view of federalism undermines the basic principle, announced in Marbury v. Madison, that ''[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.'' The judicial role of enforcing and upholding the Constitution becomes hollow when the government has complete immunity to suit. The burden should be on Mr. Sutton to show that he will protect individual rights and civil rights as a lifetime appointee to the Sixth Circuit Court of Appeals. This he has not done.

As I have said on other occasions, when the President sends us a nominee who raises concerns over qualifications or integrity or who displays an inability to treat all parties fairly, I will make my concerns known. This is one of those times. In his selection of Mr. Sutton for the Sixth Circuit, the President and his advisors are attempting to skew its decisions out of step with the mainstream and in favor of States' rights over civil rights, anachronistic ideas over people.

The Sixth Circuit is one on which Senate Republicans stalled three nominees of President Clinton during his last four years in office. They closed and locked the gates to this court in 1997. Professor Kent Markus' courageous testimony about that partisan process rings in my ears. Despite those excesses by Senate Republicans, during my chairmanship, the Senate confirmed two new conservative members to the Sixth Circuit. With this nomination, the plan of Republicans to pack this court and tilt it sharply out of balance is evident for all to see.

Before and after he took office, President Bush said that he wants to be a uniter and not a divider, and yet he has sent and resubmitted to the Senate several nominees who divide the American people. The Senate has already confirmed 119 of his other judicial nominees. The Committee and the Senate made the judgment that those nominees will fulfill their duties to act fairly and impartially. Most were not divisive or extreme. I urge the President to choose nominees who fit that profile, rather than the alternative he seems intent on imposing for so many circuit court nominees. End the court-packing effort and work with all in the Senate to name consensus, fair-minded federal circuit judges.

The oath taken by federal judges affirms their commitment to ''administer justice without respect to persons, and do equal right to the poor and to the rich.'' No one who enters a federal courtroom should have to wonder whether he or she will be fairly heard by the judge. Jeffrey Sutton's record does not show that he will put aside his years of passionate advocacy in favor of states' rights and against civil rights, and his extreme positions favoring severe restrictions on Congress' authority. Accordingly, I will not vote to confirm Mr. Sutton for appointment to one of the highest courts in the land.

NOMINATION OF JUDGE EDWARD PRADO

Mr. LEAHY. Mr. President, I am disappointed that Senate Republicans continue to focus on the most divisive judicial nominees and the White House continues its efforts to pack the courts ideologically, while the nomination of Judge Edward Prado to the United States Court of Appeals for the Fifth Circuit is being held captive on the Senate calendar. All Democratic Senators serving on the Judiciary Committee voted to report this nomination favorably. All Democratic Senators have indicated that they are eager to proceed to this nomination and, after a reasonable period of debate, voting on the nomination.

I am confident this nomination will be confirmed by an extraordinary majority—maybe unanimously. The question arises why the Republican leadership in the Senate has made no effort to proceed to Senate consideration of this judicial nomination—none.

In a statement in the RECORD early this month, I raised this matter. Then at the Judiciary Committee business meeting on April 10, more than two weeks ago, I raised this matter, again. Still, there has been no response and no effort to bring this matter before the Senate for consideration and a vote. The Republican leadership would rather focus exclusively on those controversial circuit court nominees that raise the most problems than proceed to fill vacancies with nominations on which we are able to achieve agreement.

That is most unfortunate and most telling.

Instead of proceeding to the nomination of Judge Prado, Republicans insisted on pressing forward with the controversial and divisive nomination of Priscilla Owen in early April and with the controversial and divisive nomination of Jeffrey Sutton this week.

Judge Prado is nominated to the Fifth Circuit and is an exceptional candidate for elevation to the appeals court. He has significant experience as a public servant in west Texas. Perhaps the fact that he has bipartisan support is the reason why he is not being brought forward at this time for a floor vote.

That does not fit the Republican message but reveals the truth: That Democratic Senators, having already acted on 119 judges appointed by President Bush are prepared to support even more of his nominations when they are mainstream, consensus nominees. Perhaps the fact that Democrats unanimously supported his nomination in Committee is seen as a drawback for Mr. Prado in the Republican world of nomination politics. I hope that is not the case.

I also hope the fact that Judge Prado is Hispanic is not a factor in the Republican delay. Some have suggested that Judge Prado is being delayed because Democratic Senators are likely to vote for him and thereby undercut the Republican's shameless charge that the opposition to Miguel Estrada is based on his ethnicity. Republican partisans have made lots of partisan hay attacking Democrats in connection with the Estrada nomination. We all know that the White House could have cooperated with the Senate by producing his work papers and the Senate could have proceeded to a vote on the Estrada nomination months ago. The request for his work papers was sent last May.

Rather than respond as every other administration has over the last 20 years and provide access to those papers, this White House has stonewalled. Rather than follow the policy of openness outlined by Attorney General Robert Jackson in the 1940's, this administration has stonewalled. And Republican Senators and other partisans could not wait to claim that the impasse created by the White House's change in policy and practice with respect to nominations was somehow attributable to Democrats being anti-Hispanic. The charge would be laughable if it were not so calculated to do political damage and to divide the Hispanic community. That is what Republican partisans hope is the result. That is wrong.

So some have come to the conclusion that Republican delay in connection with the consideration of Judge Prado's nomination may be related to the political strategy of the White House to unfairly characterize Democrats. Might the record be set straight if Democrats were seen to be supporting this Hispanic nominee to the Fifth Circuit. Might the Republicans' own record of opposing President Clinton's nominations of Judge Jorge Rangel and Enrique Moreno to that same circuit court be contrasted unfavorably with Democrats' support of Judge Prado.

Might Judge Prado, a conservative from Texas with a public record service as a Federal district court judge, become the first Hispanic appointed by President Bush to the circuit courts with widespread support from Senate Democrats. Might this more mainstream, consensus nominee stand in stark contrast to the ideological choices intended to pack the courts on which the White House and Senate Republicans concentrate almost exclusively.

Judge Prado has 19 years of experience as a U.S. District Court judge, which provides us with a significant judicial career to evaluate. A review of Judge Prado's actions on the bench demonstrates a solid record of fairness and evenhandedness.

While I may not agree with each and every one of his rulings or with every action he has taken as a lawyer or judge, my review of his record leads me to conclude that he will be a fair judge. No supervisor or colleague of Judge Prado's has questioned his ability or willingness to interpret the law fairly. Judge Prado enjoys the full support of the Congressional Hispanic Caucus and the Mexican American Legal Defense and Education Fund. Not a single person or organization has submitted a letter of opposition or raised concerns about Judge Prado. No controversy. No red flags. No basis for concern. No opposition.

This explains why his nomination was voted out of the Judiciary Committee with a unanimous, bipartisan vote on an expedited basis.

To understand the importance of Judge Prado's nomination, we must put it in the context of prior nominations to the Fifth Circuit Court of Appeals. Until Judge Prado's hearing, it had been more than a decade since a Latino nominee to that Court had even been allowed a hearing by the Senate Judiciary Committee, let alone a vote on the floor. I recall President Clinton's two Hispanic nominations to the Fifth Circuit and the poor treatment they received from the Republican-led Senate.

Judge Jorge Rangel was a former Texas State judge and a dedicated attorney in private practice in Corpus Christi, Texas when President Clinton nominated him to the United States Court of Appeals for the Fifth Circuit in 1997. Judge Rangel is a graduate of the University of Houston and the Harvard Law School and earned a rating of ''Well Qualified'' by the American Bar Association. Yet, under Republican leadership, he never received a hearing on his nomination, let alone a vote by the Committee or by the full Senate. His nomination languished without action for 15 months. Despite his treatment, this outstanding gentleman has recently written us in support of a judicial nominee of President Bush.

After Judge Rangel, disappointed with his treatment at the hands of the Republican majority, asked the President not to resubmit his nomination, President Clinton nominated Enrique Moreno, a distinguished attorney in private practice in El Paso, Texas. Mr. Moreno is a graduate of Harvard University and the Harvard Law School. He was given the highest rating of unanimously ''Well Qualified'' by the ABA. Mr. Moreno also waited 15 months, but was never allowed a hearing before the Senate Judiciary Committee. President Clinton renominated him at the beginning of 2001, but President Bush, squandering an opportunity for bipartisanship, withdrew the nomination and refused to renominate him.

In addition, President Clinton nominated H. Alston Johnson to the 5th Circuit in 1999. This talented Louisianan came to the Senate with the support of both of his home state Senators, but he never received a hearing on his nomination or a vote by the Committee or the full Senate in 1999, 2000, or the beginning of 2001. His nomination languished without action for 23 months.

In contrast, when I served as Chair of the Judiciary Committee last Congress, we granted Edith Clement a hearing within months of her nomination. At that time there had been no hearings on 5th Circuit nominees since 1994 and no confirmations since 1995.

Under Republican leadership, none of President Clinton's nominees to this Court received a hearing during his entire second term of office.

Some of my friends on the other side of the aisle have made the outrageous claim that Democratic Senators are anti-Hispanic or anti-Latino. I think it is important to set the record straight.

Of the 10 Latino appellate judges currently seated in the Federal courts, eight were appointed by President Clinton. Three other Latino nominees of President Clinton to the appellate courts were blocked by Republicans, as

well as several others for the district court. In fact, in contrast to the President's selection of only one Latino circuit court nominee in hist first 2 years in office, three of President Clinton's first 14 judicial nominees were Latino, and he nominated more than 30 Latino nominees to the Federal courts.

During President Clinton's tenure, 10 of his more than 30 Latino nominees, including Judge Rangel, Enrique Moreno, and Christine Arguello to the circuit courts, were delayed or blocked from receiving hearings or votes by the Republican leadership.

Republicans delayed consideration of Judge Richard Paez for over 1,500 days, and 39 Republicans voted against him. The confirmations of Latina circuit nominees Rosemary Barkett and Sonia Sotomayor were also delayed by Republicans. Judge Barkett was targeted for delay and defeat by Republicans based on claims about her judicial philosophy, but those efforts were not successful.

After significant delays, 36 Republicans voted against the confirmation of this nominee who received a ''Well-Qualified'' rating by the ABA. Additionally, Judge Sotomayor, who also received a ''Well-Qualified'' rating and had been appointed to district court by President George H.W. Bush, was targeted by Republicans for delay or defeat when she was nominated to the Second Circuit. She was confirmed, although 29 Republicans voted against her.

It is unfortunate how few Latino nominees this President has sent to the Senate. It is reassuring, however, that the Latino nominations that we have received have been acted upon in a expeditious manner.

They have overwhelmingly enjoyed bipartisan support. Under the Democratically-led Senate, we swiftly granted hearings for and eventually confirmed Judge Christina Armijo of New Mexico, Judge Phillip Martinez and Randy Crane of Texas, Judge Jose Martinez of Florida, U.S. Magistrate Judge Alia Ludlum, and Judge Jose Linares of New Jersey to the district courts. This year, we also confirmed Judge James Otero of California, and we would have held his confirmation hearing last year if his ABA peer rating had been delivered to us in time for the scheduling of our last hearing.

Also on the Senate executive calendar is the nomination of Cecilia Altonaga to be a Federal judge in Florida.

We expedited consideration of this nominee at the request of Senator GRAHAM of Florida. She will be the first Cuban American woman to be confirmed to the Federal bench when Republicans choose to proceed to that nomination. Indeed, Democrats in the Senate have worked to expedite fair consideration of every Latino nominee this President has made to the Federal trial courts in addition to the nomination of Judge Prado.

Another example, may be the nomination of Consuelo Callahan to the Ninth Circuit Court of Appeals. Unlike the divisive nomination of Carolyn Kuhl to the same court, both home state Senators returned their blue slips and support a hearing for Judge Consuelo Callahan. I hope she receives a hearing in the near future and look forward to learning more about her record as an appellate judge for the State of California. Rather than disregarding time-honored rules and Senate practices, I urge my friends on the other side of the aisle to help us fill more judicial vacancies more quickly by bringing those nominations that have bipartisan support to the front of the line for Committee hearings and floor votes.

As I have noted throughout the last two years, the Senate is able to move expeditiously when we have consensus, mainstream nominees to consider. Nationally-respected columnist David Broder made this point in an April 16 column that appeared in the Washington Post. Mr. Broder noted that when he asked Alberto Gonzales if there might be a lesson in Judge Prado's easy approval, Mr. Gonzales missed the point. In Mr. Broder's mind: ''The lesson seems obvious. Conservatives can be confirmed for the courts when they are well known in their communities and a broad range of their constituents have reason to think them fair-minded.'' To date the Senate has proceeded to confirm 118 of President Bush's nominees, 100 in the 17 months in which Democrats made up the Senate majority.

The lesson that less controversial nominees are considered and confirmed more easily was the lesson of the last two years and that lesson has been lost on this White House.

Unfortunately, far too many of this President's nominees raise serious concerns about whether they will be fair judges to all parties on all issues. Those types of nominees should not be rushed through the process. I invite the President to nominate more mainstream individuals like Judge Prado. His proven record and bipartisan support makes it easier for us to uphold our constitutional duty of advise and consent. I encourage those on the other side of the aisle to allow us to consider his nomination.

I look forward to casting a vote in favor of his confirmation.

I, again, urge the Senate Republican leadership to work with us and to agree to proceed to this consensus nomination, to provide adequate time for debate and to proceed to a vote without further delay. Judge Prado's nomination has been delayed on the Senate executive calendar for several weeks, unnecessarily in my view. I recall all too vividly when anonymous Republican holds delayed Senate action on the nomination of Judge Sonia Sotomayor to the Second Circuit for seven months. I do not want to see that experience repeated by Judge Prado. Let us work together. Let us debate and act on the nomination of Judge Prado without further unnecessary delay.

I ask unanimous consent that a copy of David Broder's April 16 column on the nomination of Judge Prado be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TALE OF TWO JUDGES

(By David S. Broder)

Were it not for an old friend, I would have been as oblivious to the story of Judge Edward Prado of San Antonio as the rest of the Washington press corps.

Judge Tom Stagg of Shreveport, La., told me his pal was up for appointment to the U.S. Court of Appeals for the 5th Circuit and suggested I go by and ''see how they treat him'' at his confirmation hearing.

Turns out it's like the Sherlock Holmes story of the dog that didn't bark. In the midst of the bitter partisan battle in which Democrats have repeatedly blocked a Senate confirmation vote on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit, Prado went through like gangbusters.

The story of why one Latino Republican has such an easy time while another creates such controversy is an instructive tale—and one with hopeful implications.

Estrada has been denied an up-or-down vote on the Senate floor because Democrats call him ''a stealth nominee,'' a man of high credentials but no judicial experience and one they say was unresponsive to their questions. Their demand to look at memos he wrote while serving in the Justice Department has been rejected by the administration and neither side has yielded.

Given this background, I was expecting to see Prado, 55, put to the test at his Judiciary Committee hearing. His credentials are impressive: a graduate of the University of Texas and its law school, four years each as a prosecutor and a public defender, a short stint as a state judge, U.S. attorney for three years and, since 1984, a federal district judge—the last two appointments coming from President Ronald Reagan.

But Prado is also a character. His courtroom is wired with the latest audiovisual equipment, which Prado, a music lover and showman, loves to demonstrate. Three years ago, during a murder-for-hire trial, he came onto the bench while a recording of ''Happy Together'' by the Turtles filled the air, and then sang: ''Imagine me as God. I do. I was appointed by the president. Appointed forever. My decisions cannot be questioned by you. I'm always right.''

Many judges may feel that way; few say so, and even fewer put it to music.

More seriously, in answering the committee's questionnaire, Prado noted controversial cases in which he ruled against a woman's claim of job discrimination by the San Antonio fire department, a diabetes patient's claim that he was unfairly found to be medically ineligible for a police officer's job, and a claim that the Texas high school graduation test discriminated against Hispanics.

In another part of the questionnaire, he listed 68 criminal, immigration and civil cases in which he had been reversed or criticized by the court of appeals. Plenty of fertile ground, one imagined, for liberal groups to challenge elevating a Reagan judge to a closely balanced and important bench just one level below the Supreme Court.

But in fact the Congressional Hispanic Caucus—which has vigorously opposed the Estrada nomination—wrote a letter endorsing Prado. Rep. Charlie Gonzalez, a Texas Democrat and co-signer of the letter, told me that he had known Prado for almost 40 years and ''he was everything you want in a

judge—he's smart and articulate, he's not arbitrary, and he really understands people. Some of his rulings I would take issue with, but when the caucus interviewed him, he talked honestly about cases that have impacted minorities and he made it clear he knows how important the courts have been to us. It was so different from our hour's conversation with Estrada, who conveyed no sense of what we would think a Latino should appreciate about the historical role of courts in bringing us to where we are today and where we need to be tomorrow.''

With the backing of the White House and the Hispanic caucus, Prado's confirmation hearing was perfunctory Sen. Patrick Leahy of Vermont, the ranking Democrat and scourge of Estrada, read a statement complaining of past Republican treatment of President Bill Clinton's Latino nominees, then left without asking any questions. The two Republicans present—Sens. John Cornyn of Texas and Jeff Sessions of Alabama—said they had known Prado for years and simply congratulated him.

Prado was then unanimously confirmed by the Judiciary Committee.

When I asked Alberto Gonzales, the White House counsel, if there might be a lesson in Prado's easy approval, he replied, ''It's hard to say. We view Judge Prado as no more qualified than Miguel Estrada or others they [the Democrats] have opposed.''

But the less on seems obvious. Conservatives can be confirmed for the courts when they are well known in their communities and a broad range of their constituents have reason to think them fair-minded. Even if they can't resist breaking into song.

Mr. LEAHY. Mr. President, I am concerned that we seem to have these divisive nominees. The Republicans are unwilling to bring forward Judge Edward Prado to the U.S. Court of Appeals for the Fifth Circuit. I mention this because I have checked every single Democrat who is willing to have an extremely short time agreement and go to a vote on Judge Prado. Apparently, it is not being brought forward because of a hold on the Republican side. I mention this because we hear often from the White House: Why are Democrats holding up these court of appeals judges?

Well, here is one where every Democrat is willing to vote on the President's nomination to the Fifth Circuit. He is a distinguished Hispanic, Judge Edward Prado. We are ready to vote on him. We have cleared it on this side of the aisle. Apparently, it is being held up on the Republican side. So the next time the White House asks why we cannot move forward with some of these people, let's say: Don't look at us; you may want to ask the other side.

It is even interesting that David Broder wrote a column, April 16, on the nomination of Judge Prado to this seat and pointed out that he had come to the hearings to see what kind of divisiveness there was and found a love-in, and he was probably surprised—I don't want to put words in his mouth, but he is probably surprised that it has not been voted on.

I will note that Judge Prado has significant experience. I do not agree with him on everything, by any means, but he was originally appointed, I believe, by President Reagan to the district court. He is a conservative Republican, a Hispanic. Every Democrat is prepared to go forward. I ask whoever is holding him up on the Republican side to release the hold, let this man go forward and let him be elevated to the U.S. Court of Appeals.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I want to talk for just a moment about a case that has seen the most attention in this debate over Mr. Sutton's nomination, and that is the case of the Board of Trustees of the University of Alabama v. Garrett.

Mr. Sutton has been criticized for representing the University of Alabama in the U.S. Supreme Court; specifically, for presenting Alabama's constitutional sovereignty immunity argument before the U.S. Supreme Court.

In the Garrett case, the Supreme Court held that a disabled individual cannot sue a State for money damages for employment discrimination under the Americans with Disabilities Act. The Court held that in order for Congress to pass that particular remedy—money damages against a State—it first had to show that States were engaging in a pattern of employment discrimination against the disabled. The Court said that Congress had not met the burden of proof required by the Constitution. That was the finding of the U.S. Supreme Court.

I disagreed with the Court's decision in Garrett, and I disagreed with Alabama's argument as presented by Mr. Sutton in the Supreme Court. I believe that Congress did, in fact, meet its burden in passing the ADA. Congress established a record of discrimination against the disabled necessary to pass constitutional scrutiny by the courts. Congress sent a loud and clear message to the courts in the findings of the ADA and in an extensive legislative history.

What happened in Garrett was that the Supreme Court—unwisely, I believe—substituted its judgment for ours. The Court reviewed our extensive findings and our legislative history, then, one by one, dismissed them as inadequate.

I must say to my colleagues that I am deeply troubled by the Court's lack of deference to Congress in the Garrett case. This lack of deference is why many of us in this body believe the U.S. Supreme Court, in Garrett, simply got it wrong.

Ultimately, whether I agree or disagree with Mr. Sutton's arguments, or whether this Senator from Ohio agrees or disagrees with the Supreme Court in that Garrett case, is really irrelevant to whether Mr. Sutton is qualified to serve on the Federal bench because, you see, Mr. Sutton was doing nothing more than acting as a lawyer, as an advocate.

It is clear that all Mr. Sutton has done is successfully argue his client's position in that case and in some other controversial cases. Bluntly, that is what lawyers do. They argue for their clients. As Mr. Sutton has testified, he has argued on behalf of a wide range of clients, on a wide range of issues.

Back in January of this year, the Columbus Dispatch weighed in on this exact point when it wrote:

> The fact is, Sutton is guilty of nothing except being a good lawyer. When he represents a disabled client, he fights hard for the disabled client. When he is representing a State opposing an extension of Federal power, as in the ADA case, he fights hard for his State client. That is what attorneys are supposed to do.

I absolutely agree with that editorial from the Columbus Dispatch and with that assessment. I believe arguing that Jeff Sutton should not be confirmed because of his legal representation in Garrett or any other case would set a very bad precedent for this body. We should not go down that path today or tomorrow when we vote. We should not go down the path of denying the confirmation of a nominee because we may not like some of the clients he has represented or because we disagree with the arguments he has made as an attorney. Think about it. If that is the standard we apply, we would never confirm anyone who has a background as a criminal defense lawyer.

The examples are legion.

What would this criterion have meant for Supreme Court Justice Thurgood Marshall? In 1943, Thurgood Marshall successfully argued a case before the U.S. Supreme Court on behalf of an accused rapist.

He used a technical jurisdictional argument to defend his client. Specifically, he argued that the Federal Government could not prosecute his client for a rape that took place on a Federal military installation in Louisiana, based on an obscure land acquisition act. There was no question in this case as to the actual guilt of the defendant, only whether the Federal Government had jurisdiction to prosecute the individuals guilty of the crime.

Nobody argued that Thurgood Marshall should not be confirmed because of his role as a defense lawyer in that case. He was doing his job—defending his client's legal position.

Obviously his role in this case did not mean that he believed that the Federal Government should not be able to prosecute crimes, or that Thurgood Marshall was not sympathetic to women's issues, or that he was in any way sympathetic to rapists, for Heaven's sake.

Let me raise an example that was called to the attention of the Senate Judiciary Committee by a another Court of Appeals nominee—the famous example is John Adams. John Adams, the revered and well-known patriot of our Nation's Revolutionary War, represented extremely unpopular clients while acting in his capacity as a private attorney.

As some of my colleagues may recall, John Adams argued in a murder trial on behalf of a prominent captain in the British army and several of his soldiers

who had allegedly killed five Boston citizens and injured several others in what is known as ''the Boston Massacre.'' Adams described his work on behalf of the British soldiers as ''the most gallant, generous, manly and disinterested Actions of my whole life, and one of the best pieces of service I ever rendered my country.'' He also described his involvement in the Boston Massacre case as a source of great anxiety—evidence enough that his representation of the soldiers was, as a political and social matter, extremely unpopular at the time.

As my colleagues know, John Adams was successful in his representation of the soldiers. Clearly, however, John Adams was not sympathetic to British rule or murder nor opposed to popular citizen uprisings.

Would the Senate have not confirmed John Adams to a court because of his work as a lawyer? I certainly hope that would not have been true.

There are many examples of individuals who were confirmed by this body for service on the Federal bench and had, during their time in private practice, represented unpopular clients or causes.

Supreme Court Justice John Paul Stevens, for example, represented two corporations charged in two separate cases with conspiracy to monopolize markets and illegal restraint of competition. Despite his work on behalf of these corporations, few would argue that Justice Stevens unfairly favors the interests of businesses over those of consumers or that his efforts as a lawyer in these cases reflect his personal feelings about corporate misconduct.

To take a few more recent examples, Eric Clay, confirmed in 1997 to the 6th Circuit Court of Appeals, represented a number of client positions that many might find personally problematic: An insurance company that was seeking to deny benefits to a disabled individual covered by the company's policy; a defendant in a sex discrimination suit; and a corporation which was seeking to displace, by condemnation if necessary, an entire town in Michigan so that an automaker could build an assembly plant on the land. Nonetheless, nobody would argue that Judge Clay then or now on the basis of his work as an attorney, held personal views that were hostile toward employees, the disabled, or people who live in small towns.

Frank Hull, who was confirmed in 1997 to the 11th Circuit, represented a company seeking to deny life insurance benefits to the spouse of a deceased employee and also represented an accounting firm that was accused of financial fraud. Justice Hull was confirmed 96 to 0. Nobody believed that Judge Hull had a bias against widows or that he supported financial fraud.

Merrick Garland was confirmed in 1997 to the D.C. Circuit Court. Prior to that, in his capacity as a Federal prosecutor, he successfully opposed a defendant who was trying to assert his constitutional right to due process in order to overturn a drug conviction. Nobody in the Senate believes that Judge Garland has any personal opposition to constitutional due process protections.

Robert Bruce King, confirmed in 1998 to the 4th Circuit Court of Appeals, represented a client accused and convicted of defrauding the U.S. Department of Housing and Urban Development. Nonetheless, nobody believes that Judge King advocates the practice of defrauding the Government or that he is somehow hostile toward the mission of the Department of Housing and Urban Development.

The list goes on and on, and I am sure that Members of the Senate and their staffs could easily come up with a laundry list of examples where an individual has represented potentially unsavory clients or causes in private practice and has nonetheless been confirmed to the Federal bench by the Senate. Members of this body did not oppose these nominees just because they might not have liked all of the nominee's clients, or because they did not like the positions they took or the issues they stood for while advocating for that particular client.

This should not even be an issue. The idea of zealously advocating for your client, no matter who that client is and what he or she is accused of, is basic and fundamental to the very idea of being a lawyer. And, I might add, it goes to the core obligation of being a lawyer. Once a person takes a case, they must represent that client to the fullest of their ability.

In fact, the American Bar Association Model Code of Professional Conduct explicitly addresses this issue. The Model Code, Canon 7–1, states this:

> The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law.

The individuals listed above represented their clients, even the unpopular ones I have mentioned, because they understood their role as attorneys. They were dedicated to representing their clients, whomever they might be, and to advocating the cause and positions of their clients. Jeff Sutton has shown the same dedication.

He has been a passionate advocate for his clients, as every lawyer is dutybound to be. He should be judged by his advocacy and ability as a lawyer. He should not be condemned for this.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I listened with care to the arguments espoused now by my good friend and colleague from Ohio, Senator DEWINE. I compliment him on many aspects of his statement especially when he first opened up and said that he believed the Court got it wrong in the Garrett case; Congress did have our findings, which I have pointed out time and time again this afternoon that, in fact, Congress did have years and years of testimony, markups by five separate committees, 17 formal hearings, on and on, making the case for the Americans with Disabilities Act. As I understood what my colleague from Ohio said, he believed the Court got it wrong. I commend him for his statement on that; obviously, I concur in that opinion.

My good friend from Ohio goes on to say that basically Mr. Sutton, in arguing against Mrs. Garrett and in arguing for the State of Alabama in this case, was simply representing his client and following the canons of legal ethics in making sure he fought as vigorously as possible on behalf of his client. I understand that and I can accept that is what Mr. Sutton was doing in this particular case.

However, the canons of legal ethics also make it clear that in representing your client to the best of your ability and to vigorously defend your client that you also have to adhere to the codes of ethics and legal ethics and one of those is to be truthful and to do due diligence in terms of understanding the parameters of mistakes. People do make mistakes; I understand that, but I do believe Mr. Sutton in what he said in his oral argument before the Court when he said the ADA was not needed. I think that goes a little bit far. Earlier I said he either did not know what Congress had done or he did know and treated it with disdain. If that were the only thing, if Mr. Sutton's representation in the Garrett case were the only thing, I would say those who oppose him would, indeed, have a weak reed on which to stand.

But that is not the point. It is not just Garrett. It is the things Mr. Sutton has said outside of his representation of a legal client.

Before I get to that I will, again, reiterate for the sake of emphasis what the Senator from Massachusetts, Mr. KENNEDY, said earlier, that in all of his representations he has never taken a case on the other side that is against States rights. Never; not one. So he picks out and looks at those cases where he can be on the side of States rights versus ability or the authority of Congress to legislate on a national basis.

Beyond that, it is what Mr. Sutton has said outside of the courtroom. First, I have pointed out before the Legal Times article in 1998 in which Mr. Sutton told a reporter he and his staff were always on the lookout for cases that would be coming before the Court that raise issues of federalism. He is always looking out for those cases. And what cases does he take? Only those in which he can argue on behalf of States rights versus Federal authority. He says: It does not get me invited to cocktail parties, but I love

these issues. I believe in this federalism stuff.

Again, that in and of itself might be kind of harmless. But then on National Public Radio in 2000 he said, ''As with age discrimination, disability discrimination in the Constitution is really very difficult to show.'' Here is the evidence: 17 hearings, markup by five committees, 63 public forums across the country, thousands of pages of documents, oral and written testimony by the Attorney General of the United States, Governors, State attorneys general, State legislators, or 300 examples of discrimination by State governments, all on the legislative record. Yet he said it is really difficult to show. He did not say this on behalf of a client; he said this in a radio interview. So we have to add all of these and look at the whole picture that emerges of Mr. Sutton.

Then in an article for the Federalist Society of 2000 Mr. Sutton says: Unexamined deference to the Violence Against Women Act fact findings would give to any congressional staffer with a laptop the ultimate Marbury power to have the final say over what amounts to interstate commerce.

Take that with the statement about how difficult it is to show in a constitutional sense, discrimination against disability, then his comments about how he believes and loves this federalism stuff, and the fact that he only takes cases on that side of the ledger. It adds up to one thing: That Mr. Sutton, in wanting to be a Federal judge, believes that when it comes to civil rights legislation, States rights trumps what we do here. When it comes to our ability to address underlying civil rights issues, States rights trumps the Federal Government. The fact he would even think that somehow Congress, in passing a law such as the ADA or the Violence Against Women Act, or any of these other civil rights bills, that somehow we have a staffer just sit down and type it out on a laptop and we bring it out here and pass it, again, that either illustrates that Mr. Sutton has a terribly uninformed view as to how we operate or he just has a disdain for what we do here.

As I said, I may disagree with some of my colleagues on the other side of the aisle on this issue or that issue, or how we approach this, but I do believe, whether it is under Republican control or Democratic control, Senators and Congressmen work very hard. We take an oath of office to uphold and defend the Constitution. We do not come out here willy-nilly and let ''staffers with laptops'' draft up a bill and just sort of vote it through. That is not what we do.

According to Mr. Sutton, he says we do that. Well, we do not do that. We have hearings. We have findings. We work things out. We took a long time in the case of the Americans with Disabilities Act—many, many years—to get it right, to make sure that we pass constitutional muster.

So it is not just Mr. Sutton's representation of his client in any particular case. It is the cases he takes, the writings he has made, the statements he has made outside the courtroom that indicate he would be an ideology-driven, activist judge on the circuit court.

If Mr. Sutton is so balanced, why didn't he ever take a case that took the opposite side on States rights? Not one. Not one.

My friend from Utah earlier pointed out he has represented people with disabilities and he sits on a board that looks out for the interests of people with disabilities. Let's take a look at that. Jeffrey Sutton did, indeed, represent the National Coalition of Students with Disabilities. According to my staff's research, the case was filed on November 6, 2000. Mr. Sutton was nominated for this court on May 9, 2001, almost 6 months later, and then Mr. Sutton did not become attorney of record on this case until April 26, 2002. That is quite a bit later. I find that very curious. In all the cases Mr. Sutton has taken, the one case they point to where he represented some people with disabilities he took after he was nominated for the vacancy on the Sixth Circuit Court of Appeals.

We have heard here time and time again that Mr. Sutton represented Cheryl Fischer in her attempt to be admitted to Case Western Medical School. Again, Mr. Sutton did work on the case, but he did not represent Cheryl Fischer. He was the Ohio Solicitor. He represented the Ohio Civil Rights Commission that supported Cheryl Fischer because that was his job. Again, he represented his client, which was the Ohio Civil Rights Commission. Cheryl Fischer's attorney was Thomas Andrew Downing.

Again, I commend Mr. Sutton's work on that case. But I guess it troubles me that Mr. Sutton's hearing testimony indicates his view that his work on that single case, a case in which he acted in his official capacity, balances out the significant impact that his arguments had on all these other cases, Garrett included.

Last, someone said Mr. Sutton sits on the board of the Equal Justice Foundation. Mr. Sutton came on that board a year before he was nominated. My question is, Has Mr. Sutton ever been the lawyer for any of the cases my colleagues mentioned that the foundation took? The foundation took cases. Was Mr. Sutton ever a lawyer for any of the cases my colleagues mentioned?

My friend from Utah named a few individuals who ''work in the disability community'' who support Mr. Sutton. I understand that. There are a few individuals who claim to be active in the disability community, and they support Mr. Sutton's nomination. But here is a list of 400 civil rights organizations, including every major disability organization, that have come together opposed to Mr. Sutton's nomination. As I look through this list, as I look especially at those who deal with disability issues, because that is my area of interest, I see sometimes they might have been opposed to this judge and then a different part of the group might have been opposed to that judge, but this is the first time that I know of that all of them came together on one judge: Mr. Sutton. All of them came together in opposing him.

My friend from Utah mentioned a person in particular, Francis Beytagh, mentioned by the Senator as the Director of the National Center of Law and the Handicapped.

I have been dealing in disability issues now going on 25 years. I said I don't know about this group. Let's find out about it. There is nothing in Mr. Beytagh's current and very detailed resume posted on the Web page of the Florida Coastal School of Law that mentions any work of his in the disability community—not even one mention. But I did find out that the National Center of Law and the Handicapped was founded in the early 1970s, in South Bend, IN, and has not existed for 15 years at least, according to Harvey Bender, one of its founders.

I don't know. My friend from Utah said he was the legal director for the National Center of Law and the Handicapped. We can't even find that that exists anymore, but evidently, in the 1970s, it was someplace at Notre Dame.

I understand from Mr. Beytagh's letter of support he worked extensively with Mr. Sutton when Mr. Beytagh was Dean of the Ohio Law School, and I also notice Mr. Beytagh also worked for Jones Day law firm, which is on his resume, which of course is the law firm for which Mr. Sutton works.

That is all great. But the statement that Mr. Beytagh represents a viewpoint of the disability community is totally inaccurate—totally inaccurate.

I just wanted to make those points to clear up some misconceptions that may have come out here on the floor earlier today, and hopefully I will have some more to say about this tomorrow.

Again, I want to make it very clear that it is not just Mr. Sutton's statements in the Garrett case. My friend from Ohio, Senator DEWINE, is absolutely right. He is representing his client. That is not the point.

However, he did say one thing in that case that bothers me. That was, basically, that ADA was not needed.

OK, maybe you might excuse that and say that is just pushing the envelope on being a vigorous proponent of his client's views. But then take that in the contextual framework of everything else—Mr. Sutton always taking cases that are just on one side of the States rights issue, just one side; the fact that on numerous occasions outside the courtroom, in speaking and in writing, Mr. Sutton has shown either a total misunderstanding of how we operate here or a clear disdain for the ability of Congress to respond nationally in the area of civil rights. Take this all together and, again, it points to a person who has an ideology, as the New

York Times editorial said this morning: It is another ideologue for the court, someone who is driven by an ideology.

I don't mind someone having an ideology. All of us have different beliefs. But to be driven by an ideology and to carry that on the court indicates to me that Mr. Sutton would be an ideologically driven activist judge who would do all that he could to find on behalf of States rights as opposed to Federal rights.

There may be times when States rights should trump Federal rights—obviously. Sometimes Federal rights ought to trump States rights. That is the give and take of our system. But according to Mr. Sutton's views, his writings, his statements, the cases he has taken, his view is that States rights should always trump what we do here at the Federal level.

That is why I believe Mr. Sutton should not be on the circuit court. Maybe he should be on a State court someplace but not on the Federal bench.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I would like to make some remarks on the pending nomination of Jeffrey S. Sutton, a nominee for the Sixth Circuit Court of Appeals. He is an extraordinary and excellent attorney whom the President has nominated.

In 1990, he graduated first in his class at Ohio State University Law School. I know Senator DEWINE would agree that that is one of America's great law schools. After law school, he served as a law clerk for a judge on the Second Circuit Court of Appeals, the same kind of court of appeals on which he would be now a judge. He has had firsthand experience on how a court of appeals operates. Then he clerked for two Justices on the U.S. Supreme Court. That is not something easily achieved for a graduating lawyer. To be chosen to be a law clerk for a Supreme Court Justice is a remarkable achievement. Not many get it, and many apply for it. He clerked for Justices Lewis Powell and Antonin Scalia on the Supreme Court.

From 1995 to 1998, he served as the Solicitor for the State of Ohio. That means he was chosen to argue appellate cases for the State of Ohio, to advise the State on what cases to take up, what positions to take on those cases. Again, it is the kind of experience that is invaluable for a court of appeals nominee.

Since 1995, he has taught courses on Federal and State constitutional law as adjunct professor at Ohio State. He is currently a partner in the Columbus, OH, office of the esteemed law firm of Jones, Day, Reavis & Pogue.

Mr. Sutton has argued 12 cases before the U.S. Supreme Court; he has won 9 of them. That is quite an extraordinary record. Whether he won them or not, just being chosen to argue any case before the Supreme Court is a great honor. Very few lawyers in their entire career will ever be able to argue a single case before the Supreme Court. Why was he chosen to argue 12 cases before the Court? Because he was recognized as a brilliant lawyer, a person who understood appellate law and procedure, who understood constitutional issues and statutory construction and the things that appellate judges do. That speaks well of him. He also has argued 14 cases in State supreme courts.

Just this year, the American Lawyer magazine named Mr. Sutton one of the best lawyers in America under age 45. To recite his credentials is to reach one conclusion: If you need representation in appellate court, you could hardly do better than Jeffrey Sutton. We are looking at a preeminent nominee, one of the best lawyers in America.

The ABA has given Mr. Sutton what the Democrats call the gold standard, a qualified rating, with a minority voting ''well-qualified.'' His qualifications don't seem to matter to a few who are dedicated opponents, and who, I have to say, are not being realistic in this matter. They are not being fair, and they are showing partisanship, and an extreme ideological bent.

The special interest groups and some in this body have targeted this nominee. They have raised the same arguments we have heard before. They allege, amazingly, that he is hostile to the rights of the disabled. They claim he favors weakening laws that deal with age discrimination. They say he is pro-life because he is a member of the supposedly pro-life Federalist Society. But these claims are not pertinent. They miss the mark.

Let's start with this disability rights question. It is a very important issue. It is something we ought to talk about with regard to Jeffrey Sutton, and we need to remember the concepts on this matter as we deal with other nominees who come before the Senate.

The charges and complaints are based in large part on Mr. Sutton's representation of my home State of Alabama in Board of Trustees of the University of Alabama v. Garrett. In the Garrett case, what happened was that an employee of the university sued the university, claiming that university's policies violated the Americans with Disabilities Act. Mr. Sutton argued on behalf of the State of Alabama, and the Supreme Court agreed with him that Congress had not identified a pattern of irrational State discrimination in employment against the disabled. Congress, therefore, he argued, could not abrogate the State's 11th amendment immunity from suits for money damages by the passage of the Americans with Disabilities Act. This well-established principle was recognized centuries ago by Blackstone before the founding of this country.

I would say parenthetically that I served as attorney general of the State of Alabama. I know what the duties of attorneys general are, as does Senator CORNYN in the chair, a member from the State of Texas. It is the duty of the State to defend its prerogatives. An attorney general who does not defend the legal authority of a State, and allows that authority to be eroded from any source whether it be the Congress or any other entity is failing in his or her duty.

Blackstone, with regard to the concept of being able to sue the States, said:

> No action lies under a republican form of government against the state or nation, unless the legislature has authorized it: [this is] a principle recognized in the jurisprudence of the United States, and of the individual states.

So no action lies against the State or the Nation unless a legislature authorizes it.

The reason is pretty simple. The power to sue is the power to destroy. States or the Federal Government will not allow themselves to be destroyed by lawsuits. So the ability of private parties to sue a sovereign Federal Government, or a sovereign State government, is limited.

Now, State sovereign immunity under the Eleventh Amendment is the concept we are dealing with, but those who want to oppose Mr. Sutton have taken the position that his defense of sovereign immunity shows that he is opposed to the Disabilities Act. Critics say he doesn't care about disabled children because he defended the legitimate interests of the State of Alabama in a lawsuit involving how the Americans with Disabilities Act ought to be interpreted. This argument is baseless on many levels.

First, I want to talk about these sovereign immunity cases. Some critics say that because Mr. Sutton argues for state sovereign immunity, he somehow believes that persons who are discriminated against because of their disabilities are not entitled to redress. That is not true. The National Association of Attorneys General—which I was pleased to be a member of, as was the Presiding Officer, and I'm sure as were a majority of attorneys general at that time who were also members of the Democratic Party—in a letter signed by 27 of their members, including 12 Democrats, said:

> We are particularly concerned when we see a lawyer being attacked not for positions he advocated as a private individual, but for positions he argued as a legal advocate for the State government.

Well said. It is not a question of whether Mr. Sutton believed that an employee of any State ought not to have redress. The question is whether or not this was a constitutionally proper way to go about it. If lawyers were

attacked for vigorous client representation, this would have a chilling affect on their willingness to take unpopular cases. That would be unfortunate for our legal system.

With respect to the Garrett case, it is not an exaggeration to say that the case has nothing to do with the overall worthiness of the Americans with Disabilities Act—nothing at all. Mr. Sutton himself stressed in his brief to the U.S. Supreme Court that the ADA ''advances a commendable objective—mandatory accommodation for the disabled.''

Seth Waxman, President Clinton's Solicitor General and Mr. Sutton's opponent in the Garrett case, said he saw nothing to suggest that Mr. Sutton disagreed with the aims of the Americans with Disabilities Act. What Mr. Sutton did argue was that the 11th amendment principle of State sovereign immunity protects States from lawsuits in federal court asserting violations of the Americans with Disabilities Act. Seven other States—Arkansas, Hawaii, Idaho, Nebraska, Nevada, Ohio, and Tennessee—submitted briefs joining with him to affirm this position. The Supreme Court ultimately agreed.

In the Garrett case, the question before the Supreme Court was not the validity or purpose of the ADA; it was whether the Federal Government could abridge State sovereign immunity by making States liable in Federal court for violations of the ADA. This issue involves a very narrow and small part of the act. In fact, only the 3.7 percent of the American workforce employed by a State would be affected by this issue. The 96.3 percent of the workforce not employed by a State was not at all affected by the Supreme Court's decision. In other words, this Congress authorized individuals to file lawsuits for ADA violations against both private entities and also against the States. The State of Alabama said that allowing the Garrett lawsuit to go forward against the State violated the State's sovereign immunity.

When the State of Alabama took the case to the Supreme Court, it looked around the country for one of America's best appellate lawyers, and it chose Jeffrey Sutton. He argued the case and won it in the Supreme Court. That win does not gut the ADA; it hardly impacts it in even a minor way. Only 3.7 percent of the workforce would be impacted by it. So the Supreme Court's decision in Garrett meant almost nothing, as far as the overall enforcement of the ADA was concerned, in dealing with discrimination against those employees who are disabled.

What was at stake for the States in Garrett was how the Constitution defined the fundamental relationship between the State government and Federal Government. The Supreme Court explained the relationship in the Garrett case this way:

> The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in Federal Court. We have recognized, however, that Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and ''act[s] pursuant to a valid grant of constitutional authority.'' Congress may subject nonconsenting States to suit in Federal Court when it does so pursuant to a valid exercise of its Section 5 power under the Fourteenth Amendment.

That is what the Supreme Court was talking about. It didn't have anything to do with the merits or demerits of the Americans with Disabilities Act itself. The Supreme Court went on to conclude that the narrow provision applying the ADA to the States was not a valid exercise of Congress's section 5 power under the 14th amendment:

> Congress is the final authority as to desirable public policy, but in order to authorize private individuals to recover money damages against the States [also sovereign entities, I add parenthetically], there must be a pattern of discrimination by the States which violates the Fourteenth Amendment, and the remedy imposed by Congress must be congruent and proportional to the targeted violation. Those requirements are not met here.

So when my good friend Senator DEWINE—an excellent lawyer from Ohio—earlier indicated he thought the Supreme Court was in error, maybe that was because he was here when the ADA was passed and I wasn't. But as a former attorney general, I think the Supreme Court was correct: If we allow Congress to go around willy-nilly and knock down the classical, historic sovereign immunity of our States, it will weaken the States to an extraordinary degree.

The Supreme Court went on to take pains to emphasize that its decision did not deprive the disabled of their rights:

> Our holding here that Congress did not validly abrogate the States' sovereign immunity from suit by private individuals for money damages under Title I [of the Americans with Disabilities Act] does not mean that persons with disabilities have no Federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief. . . .
>
> In addition, State laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of redress.

In other words, the Supreme Court said this would not leave a disabled person who works for a State without a remedy for discrimination. That person can file for an injunction, receive back wages if they have been unfairly terminated, and get an order that they have to be reinstated. But given the classical doctrine of sovereign immunity, given the record this Congress developed in passing the ADA, and given the language of the statute that was passed, the Supreme Court could not legitimize an action for money damages against the States.

As a matter of fact, I would note all 50 States have passed laws to give protections to the disabled, in addition to the Federal ADA, in part by providing remedies like injunctions and back pay. It is simply not true that the States do not have any concern for disabled citizens.

I also think it is notable that when Congress passed the ADA, it did not impose on the Federal Government the obligations it placed on the States. The Members of this body express great anguish that the States did not gracefully allow themselves to be sued, and they complain that the attorneys general of the States did not knuckle under by allowing people to sue the States. But when Congress passed the ADA, it did not make the act applicable to the United States Government. Even though the Federal Government is the largest employer in America, it does not have to extend to its own disabled employees the same benefits it demands of the States. It would be ironic, to say the least, for us to criticize Jeffrey Sutton for advocating State constitutional immunity from suit under the ADA when this very Senate exempted the Federal Government from the ADA's requirements.

This criticism is particularly unfair to Mr. Sutton because he has a demonstrated commitment to the disabled. Beyond his sound historical and effective legal arguments in the Garrett case before the Supreme Court, anyone who knows Jeffrey Sutton knows that he is sensitive to the needs of the disabled. When Mr. Sutton started ninth grade, his father became head of the Matheny School in Peapeck, NJ. Matheny was a boarding school providing education and life skills to disabled children with cerebral palsy.

Mr. Sutton spent time at the school doing maintenance work. This experience made him well aware of the challenges faced by the disabled.

Since that time, Mr. Sutton has continued his commitment to the disabled. Few are better qualified to speak about that than Cheryl Fischer. Ms. Fischer, a blind woman, applied for admission to Case Western Reserve University's medical school. The school denied her admission because of her disability.

Mr. Sutton was asked to participate in the case by Ohio's attorney general, and was given a choice of whom to represent. He was told, ''you can represent the school and oppose a blind woman's right to be admitted to the medical school, or you can represent her.'' He chose to represent Cheryl Fischer, without charge, pro bono, and he passionately argued her case before the Supreme Court of Ohio.

He lost the case, but Ms. Fischer has no doubt about Mr. Sutton's ability and integrity. She said:

> I think he believes thoroughly in the civil rights of all people. He is not someone who would want to minimize the rights of disabled people. He helped me stand up for what I believe in.

She went on to say:

> I would definitely like to see him on the Federal court.

Cheryl Fischer is just one of many who believe Jeffrey Sutton would protect disability rights and civil rights

generally as a judge on the very important Sixth Circuit Court of Appeals.

Mr. Sutton is also a board member of the Equal Justice Foundation. It is a nonprofit organization based in Columbus, OH, that provides legal representation to the disadvantaged, including the disabled. In 1999, the Foundation sued to compel the city of Columbus to comply with the Americans with Disabilities Act by installing curb cuts for wheelchairs on city streets.

The executive director of the Equal Justice Foundation, Kimberly Skaggs, disagrees with Jeffrey Sutton politically but supports his nomination to the Sixth Circuit. She said:

Mr. Sutton possesses all the necessary qualities to be an outstanding Federal judge. I have no hesitation whatsoever in supporting his nomination.

Frankly, I have been disappointed by the leaders of the disability community on this issue. They have stirred up opposition. They have told the American disabled community that Jeffrey Sutton does not care about the disabled. That is not true, but that is what they have said. They said that the sovereign immunity position he advocated for his clients in ADA cases meant he personally did not care about the disabled, that he did not like them, that he was opposed to them, and that he would not give them a fair shake in court.

That is basically what they have said. They have suggested his legal efforts were aimed at harming the disabled, when in truth he was simply vindicating the historical legal protection of the States for his clients. The State governments have long enjoyed this protection from federal lawsuits.

Another groundless allegation is that Mr. Sutton opposes laws against age discrimination. This allegation stems from his representation of the State of Florida in a case called *Kimel* v. *Florida Board of Regents*. In Kimel, the Supreme Court agreed with Mr. Sutton's argument that it was not necessary for Congress to abrogate State sovereign immunity through the Age Discrimination in Employment Act because the States were already protecting their senior citizens against discrimination. As with the disabilities right issue, Mr. Sutton did not advocate judicial repeal of the act. Far from it. He explicitly stated that the ADEA advances a commendable policy—nondiscrimination against the elderly. What he argued for was the proper constitutional balance between the State and Federal governments. The Supreme Court agreed with him. So now these people are saying that a reasonable and honorable position he advocated for his client—whether he won or not, even though he did in fact win—somehow disqualifies him from the bench. I think that is unfair, and I am disappointed with some of the people who are making these arguments because I think if they took a moment to look at it, they would know these arguments were not well taken.

Some have even brought up that he is a member of the Federalist Society. One special interest group deems the society hostile to reproductive rights, and suggested that this nominee is guilty by association. The way some of my colleagues on the other side of the aisle have talked about the Federalist Society, it would seem that membership might amount to a scarlet letter that nominees should wear during the hearings. But this is an unwarranted attack on the Society and its members. Although it sponsors numerous discussions of controversial issues, from abortion to the war against terrorism, the Federalist Society takes no position on any of these issues. Regular panelists at their conferences include noted liberals like Harvard law professor Laurence Tribe and ACLU president Nadine Strossen. The society cannot be said to be hostile to abortion rights or any other rights, and so its members—here, Jeffrey Sutton—should not be blamed for having participated in the Society.

Finally, we should move this nomination forward because of the understaffed Sixth Circuit bench. The Judicial Conference of the United States, which deals with court staffing and other issues related to our Federal judges, has determined that the vacancy that would be filled by Mr. Sutton's appointment is a judicial emergency. In fact, there are currently six vacancies on the Sixth Circuit, all of which have been deemed emergencies. This court is in crisis. Those six vacancies impair the administration of justice.

The current understaffing on that court makes it imperative we promptly examine and approve nominations of all the six circuit candidates, particularly this eminently, extraordinarily qualified nominee, one of the best lawyers in America, Jeffrey Sutton.

I had the pleasure to see Mr. Sutton testify. He was asked questions all day long until 9 p.m. at night. He was complimented by Senator DIANNE FEINSTEIN for his willingness to discuss anything he was asked. He answered the questions openly. He answered the questions with great legal skill and judgment time after time after time. I cannot think of a single answer that he gave in that long examination that anyone found offensive. It was a tour de force of legal exposition. I was extremely impressed not only with his brilliance but with his kind demeanor and his sensitivity to the questions. He listened to people's questions. He responded very carefully and sensitively to those questions.

Those were precisely the qualities I believe would make him an extraordinary court of appeals judge. You could look throughout this country and find very few people more qualified by ability, by experience, by integrity, to hold this high office.

I strongly urge my colleagues to confirm his nomination.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I had the opportunity today to listen to Senator HARKIN speak on the Sutton nomination. I was terribly impressed with his ability to explain to the American public on a very personal basis, as a result of his brother's handicap, why this nomination is so important. I hope all the Senate has the opportunity to see and review Senator HARKIN's comments. They were so appropriate and directly on point.

Again, the Senator from Iowa, the junior Senator from Iowa is a person of stature who always brings substance to a debate as he did in this instance.

Mr. SESSIONS. Mr. President, I will comment to the distinguished Senator from Nevada about Senator HARKIN's passionate advocacy for the disabled in America. He cares deeply about that issue and there is no one more eloquent on it than he is.

I ask the Senator from Nevada if he is aware that Jeffrey Sutton voluntarily agreed, on a pro bono basis, to prepare and to passionately argue a case before the Supreme Court of the State of Ohio that a woman who was blind should be admitted to the Case Western University Medical School, even though he lost the case. I wonder if the Senator knew that? A lot of the Senators have not known that he has a personal concern about this issue and has given of his own wealth—that is, his time—toward that effort.

Mr. REID. I say to the distinguished Senator from Alabama, I am aware of the information we have all been given on the nomination, and he certainly did do this.

What we have to look at, though, is his entire background and we will all do that. My point was that I think the Senator from Iowa, Mr. HARKIN, laid out a foundation for our taking a very close look at this nominee. As the Senator from Alabama knows, the nominee has stated his views over a considerable period of time, more than just the one case he argued in Ohio.

All Members have a decision to make tomorrow as to whether this man, Jeffrey Sutton, would be the kind of person we want on the circuit court. We all have that decision to make, and we can weigh what he has done with what he has not done and make that judgment.

My point I was making is that we oftentimes in the Senate debate in the abstract. Senator HARKIN did not do that. He formed his debate based upon his brother, who was accepted to a school for the deaf and dumb; as Senator HARKIN said, his brother may have been deaf but he wasn't dumb. I think this is the only case I am aware of where the disabled community has been so up in arms over a nominee.

First, I hope we have the opportunity tomorrow to speak to our respective caucuses—the majority leader has to make that decision as to whether we will vote at noon tomorrow or after the caucuses. Regardless, it is quite clear that we are going to vote tomorrow. All 100 Senators have to make a decision as to what they want to do.

Mr. SESSIONS. I note that the Senator from Nevada, who is himself a superb lawyer, has represented criminals and defended them on occasion, as I have. I would point out that just because he represented a cause and advocated it, it does not necessarily mean he shared all those views, personally. I also would note, and am pleased to see, that the State of Nevada joined Alabama as amicus curiae in the Garrett case.

Maybe the Senator would like to once again respond. I am not entitled to the last word. If not, I will go forward with morning business.

Mr. REID. Mr. President, if I could just ask the Senator to yield, I have learned, having served in the Senate, that the majority always gets the last word, so the last word is that of the Senator from Alabama.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that we proceed to a period of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

COMMEMORATING THE ANNIVERSARY OF THE BEGINNING OF THE ARMENIAN GENOCIDE

● Mrs. FEINSTEIN. Mr. President, I rise today, as I do every year, to commemorate the anniversary of the Armenian Genocide. It has now been 88 years since this tragic event unfolded, and after another year, the historical fact of this atrocity continues to be questioned.

April 24, 1915, marked the beginning of the Ottoman Empire's brutal and unconscionable policy of mass murder, directed against men, women and children Armenians. Over 8 years, Armenians faced starvation, deportation, and violent death at the hands of their own government. Before the genocide began, 2.5 million Armenians lived in the Ottoman Empire. One and a half million Armenians were killed and another 500,000 were driven from their homes, their property and land confiscated.

Many descendants of the survivors of the Armenian Genocide live in the United States, and some actual survivors settled in my own State of California. Overall, half a million Armenian Americans live in California, and I am proud to serve them in the Senate. The strength and importance of their community exemplifies how any group of people can be reborn in the United States. Armenian Americans are at the forefront of the effort to keep the events of the Armenian Genocide in the public eye, but it is the duty of us all, as citizens of a nation that embodies justice, liberty, and freedom not to forget.

We must take time each year to acknowledge this act of ethnic cleansing because we cannot afford to forget. The 20th century saw too many genocides, the events in the Ottoman Empire being only the first. In Germany and Eastern Europe, Cambodia, Rwanda, Bosnia, and Serbia, millions of people were killed because of their race, ethnicity, or religion.

Through these tragedies, too many have remained silent. We must make clear, in the 21st century, that mass murder cannot be tolerated, will not be tolerated. We cannot afford to forget or hide events such as the Armenian Genocide, or another group in another place will experience the same persecution and the same systematic intent to destroy an entire people. This is why we must commemorate this horrific period in the history of the Armenian people each and every year.

Let us remember the Armenian Genocide. Let us ensure that those who suffered did not die in vain. Let us ensure that those who survived did not do so to watch the world forget their sufferings. We honor the living by speaking out today.●

GUADALUPE CENTER FOR DEDICATION TO IMPROVING THE LIFE OF LATINO COMMUNITY

● Mr. BOND. Mr. President, today I would like to commend the Guadalupe Center Inc. for their continued commitment to improving the life of Latinos throughout Kansas City, MO.

The Guadalupe Center began as a volunteer school and well baby clinic for Mexican immigrants in Kansas City's Westside in 1919, becoming one of the Nation's first social service agencies for Latinos in the United States.

Once working out of the rectory of Our Lady of Guadalupe Shrine on West 23rd Street, the Guadalupe Center now has nine buildings and has expanded to serve the entire Kansas City Metropolitan Latino community.

Today, the Center provides a number of essential services and is a leading advocate for the Latino community.

Health programs at the center include substance abuse, teen pregnancy, and HIV/AIDS education and counseling. The center's diligent work in reaching this disproportionately affected Latino population is to be congratulated and encouraged.

Also, the center has had a great deal of success with increasing employment opportunities for the unemployed and underemployed in the Latino community. This success goes hand in hand with the center's constantly expanding education programs, which provide participants with a number of opportunities, including second language GED and job training skills.

Beyond reaching adult and young adults, the center also works to expand opportunities for children through its Plaza de Ninos preschool, which prepares young Latino children for early school success and helps them with the necessary English language skills, while providing childcare for working parents.

The Guadalupe Center's activities and services, which continue to grow in number and impact, serve as an example of the center's vision and dedication for the Latino community.

The future of Kansas City and the quality of life for its residents, especially the Latino community, depends on the decisions and the investments made today. The Guadalupe Center had taken the lead in making these strategic investments in Kansas City's urban core. Their efforts have improved the lives of the Latino community's children and families and the effects will be felt for generations to come.

I look forward to partnering with the Guadalupe Center in future investments in Kansas City's Latino community.●

CHAMPION TREE PLANTING AT THE U.S. CAPITOL

● Ms. STABENOW. Mr. President, I rise today to commemorate a wonderful Arbor Day gift that was donated to the U.S. Capitol by the Champion Tree Project and the Mount Vernon Ladies' Association. Last Thursday, on April 24, 2003, the U.S. Capitol planted a 6-foot sapling clone of a white ash tree grown by George Washington in the late 1700s. This sapling clone is the first successful recreation of the Champion Tree Project's efforts to spawn exact genetic duplicates of each of Washington's surviving trees at Mount Vernon.

This gift is extremely special to me for two reasons. First, the Champion Tree Project is a Michigan-founded, grassroots organization that was founded by a Michiganian father and son team, David and Jared Milarch. The Milarch family has been the driving force behind this organization, and I commend them for their historic efforts to protect these important trees. In addition to working to protect historically significant trees like those on the Mount Vernon estate, the Champion Tree Project is dedicated to protecting Champion trees, which are the biggest—and often among the oldest—known members of their species in the United States. After cloning, these saplings are planted in protected sites where they can be enjoyed and studied by future generations.

Second, I was at Mount Vernon on August 1, 2001, when the Champion Tree Project collected the budwood and branches from the 13 surviving trees planted under George Washington's direction over 200 years ago. The DNA